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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,803	02/02/2001	Theodore C. Jacoby JR.	7812	9650
1688	7590	10/06/2004	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			GARG, YOGESH C	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,803

Applicant(s)

JACOBY, THEODORE C.

Examiner

Yogesh C Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-7 and 12-37 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 and 12-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Notice of Non-Responsive Amendment

1. The amendment received on July 6, 2004 is acknowledged and entered. The applicant has withdrawn claims 1-3 and 8-11 as being drawn to non-elected inventions. The applicant has further amended claims 4-7 and 12-28 and added new claims 29-37. Currently claims 4-7 and 12-37 are pending for examination.

2. The reply filed on July 6, 2004 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

(i) Newly submitted claims including currently amended claims 4-7 and 12-28 and newly added claims 29-37 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly submitted claims including currently amended claims 4-7 and 12-28 and currently added new claims 29-37 are directed to an apparatus for on-line brokerage operation of goods classified in class 705, subclass 26 and the originally claimed invention of claims 4-7 and 12-28 was drawn to a computerized

product, that is, interfaces for receiving, returning and displaying information from other terminals, classified in class 709, subclass 203.

Therefore, the inventions are distinct, each from the other because: Inventions presented now via currently amended claims 4-7 and 12-28 and currently added new claims 29-37 has separate utility such as requiring an apparatus for on-line brokerage operation of goods which was not required by the originally presented invention and as treated on merits in the earlier Office action mailed on April 1, 2004. See MPEP § 806.05(d). It is also to be noted that for the same reasons claims 1-3 and 8-11 were restricted, see Office action mailed on March 8, 2004 and those claims are withdrawn.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims including currently amended claims 4-7 and 12-28 and newly added claims 29-37 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.


3. The amendment filed on July 6, 2004 is presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The presented claims including currently amended claims 4-7 and 12-28 and newly added claims 29-37 are not readable on the elected invention because they are withdrawn from consideration as being directed to a non-elected invention, analyzed above.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
September 29, 2004